Office of Environmental Policy and Guidance
RCRA/CERCLA Division
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Recent Developments in RCRA/CERCLA: Two Years In Review
[October 1999 – October 2001]

The Office of Environmental Policy and Guidance, RCRA/CERCLA Division (EH-413) is issuing this summary to elevate DOE waste managers' and environmental restoration project managers' awareness of recently issued or emerging requirements under the *Resource Conservation and Recovery Act* (*RCRA*) and the *Comprehensive Environmental Response, Compensation, and Liability Act* (*CERCLA*). While this document was initially expected to highlight developments that occurred during Fiscal Year (FY) 2000, it has been expanded to include FY 2001to capture selected, DOE-relevant policy, guidance, and regulatory developments initiated before January 1, 2000, but completed in recent months.

This document is separated into programmatic areas and concisely summarizes recently issued RCRA/CERCLA Executive Branch, regulatory, and policy and guidance developments. ***It strictly focuses on Federal (EPA, DOE) developments that are expected to have direct and potentially significant bearing on DOE operations.*** Where available, references and resources cited herein have been equipped with hyperlinks allowing users to access the item by clicking on the blue, underlined text. Questions or comments regarding this review or the information presented herein should be directed to Jerry Coalgate, Room GA-076, Forrestal Building, at 202-586-6075, via fax at 202-586-3915, or electronically at Jerry.Coalgate@eh.doe.gov.

Development	Description of Development
Executive Order (EO) 13148 – *Greening the Government Through Leadership in Environmental Management* (65 *FR* 24595; April 21, 2000)	EO 13148 requires all Federal agencies to implement environmental management systems (EMS) at their facilities; conduct environmental compliance or EMS audits at their facilities; implement pollution prevention projects in order to attain and maintain compliance; and meet certain reduction goals. DOE Notice 450.4 (accessible at http://www.directives.doe.gov/pdfs/doe/doetext/neword/450/n4504.pdf) outlines the roles and responsibilities for DOE elements implementing this order, and remains in effect through September 1, 2002 (see http://www.directives.doe.gov/pdfs/doe/doetext/neword/450/n4505.pdf). DOE's *First Annual Report* (March 2001) describes the progress that the Department has made in complying with all aspects of EO 13148 can be accessed and downloaded at http://tis.eh.doe.gov/oepa/data/eo13148/2001.pdf. ***Further information: Contact Jane Powers at 202-586-7301, Jane.Powers@eh.doe.gov, or 202-586-0955 (fax).***
Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended by the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as SARA, Title III	
Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting, Final Rule (66 *FR* 4500; January 17, 2001 and 64 *FR* 58371; October 29, 1999)	This rule identified lead as a persistent, bioaccumulative and toxic (PBT) chemical and reduced the lead and lead compound Toxic Release Inventory (TRI) reporting threshold under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) to 100 lbs/year. This lower reporting threshold does not apply to lead contained in stainless steel, brass, and bronze alloys, which remain reportable under the statutory reporting thresholds (25,000 lbs manufacture and process, and 10,000 lbs "otherwise use" per year). Because this report took effect on January 1, 2001, first reports at the lower threshold will be due on or before July 1, 2002. EH-413 has posted a *Regulatory Bulletin* for this rulemaking at http://tis.eh.doe.gov/oepa/guidance/cercla/pbtlead.pdf. A DOE comment package (dated September 28, 2001) highlighting technical inconsistencies and inadequacies of EPA's *Draft Guidance for Reporting Releases and Other Waste Management Activities of Toxic Chemicals: Lead and Lead Compounds* is accessible at http://homer.ornl.gov/oepa/comments/cercla/leadpbtguidecmts.pdf. ***Further information: Contact Jane Powers at 202-586-7301, Jane.Powers@eh.doe.gov, or 202-586-0955 (fax).***

Development	Description of Development
Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Release Reporting; Final Rule (64 *FR* 58666; October 29, 1999)	EPA's final rule identifies certain chemicals as PBTs and lowers the reporting thresholds under section 313 of EPCRA. The new thresholds are 0.1grams/year for dioxin, and either 10 or 100 lbs/year for the remaining PBT chemicals. The rule also eliminates the *de minimis* exemption for PBT chemicals and excludes PBT chemicals from eligibility for the one million pound alternate EPCRA threshold. The rule became effective December 31, 1999. Chemical additions and new thresholds beginning January 1, 2000, must appear in the TRI report due on or before July 1, 2002. An EH-413 *Environmental Guidance Regulatory Bulletin* explaining elements of the final rule can be accessed and downloaded at http://tis.eh.doe.gov/oepa/guidance/cercla/pbt61.pdf. DOE's consolidated comment package, which responded to EPA's proposed rule and conveyed Departmental suggestions and concerns, can be accessed at http://tis.eh.doe.gov/oepa/comments/CERCLA/tripbtcmts.pdf. ***Further information: Contact Jane Powers at 202-586-7301, Jane.Powers@eh.doe.gov, or 202-586-0955 (fax).***
Comprehensive Five-Year Review Guidance (OSWER Dir. 9355.7-03B-P) Draft, October 1999	Five-year reviews, which are used to determine whether a CERCLA response is "protective," must be conducted at both National Priorities List (NPL) and non-NPL whenever contamination remains above concentrations that allow for unlimited use and unrestricted exposure. Consistent with EO 12580, Federal (i.e., "lead") agencies must ensure that five-year reviews are conducted at sites where they are required or appropriate. Thus, although the June 2001 guidance (accessible via http://homer.ornl.gov/oepa/guidance/cercla/5yearguide.pdf was prepared for use by EPA personnel and provides an EPA perspective of the statutory requirements and policy expectations, lead agencies such as DOE are directed to conduct reviews at sites under their jurisdiction, custody, or control consistent with this guidance. A comment package conveying a Departmental perspective on EPA's preceding ***draft*** guidance is accessible at http://tis.eh.doe.gov/oepa/comments/cercla/5yrrev.pdf. ***Further information: Contact John Bascietto at 202-586-7917, John.Bascietto@eh.doe.gov or 202-586-3915 (fax).***
Ecological Soil Screening Levels ("Eco-SSLs") for CERCLA Sites Guidance	This Draft document presents a set of procedures for developing scientifically sound, ecologically based, screening levels for contaminant concentrations in soils intended to be protective of terrestrial ecosystems. When complete, it will include a look-up table of generic Eco-SSLs (soil concentrations) for up to 24 chemicals that are frequently of ecological concern at Superfund sites and are expected to be protective of the mammalian, avian, plant, and soil invertebrate communities that could be exposed to these contaminants in soils. The *Draft Ecological Soil Screening Level (Eco-SSL) Guidance and Exhibits, and Related Federal Register n*otice can be accessed at http://www.epa.gov/superfund/programs/risk/ecorisk/ecossl.htm. ***Further information: Contact John Bascietto (Chairman, Wildlife Exposure Modeling Task Group) at 202-586-7917, John.Bascietto@eh.doe.gov, or 202-586-3915 (fax).***
Resource Conservation and Recovery Act (RCRA)	
Storage, Treatment, Transportation, and Disposal of Mixed Waste; Final Rule; Proposed Rule; Advance Notice of Proposed Rule (66 *FR* 27218; May 16, 2001, 64 *FR* 63464; November 19, 1999, & 64 *FR* 10063; March 1, 1999)	EPA conditionally exempts from RCRA Subtitle C facilities generating and managing certain low-level mixed waste (LLMW) and technologically enhanced naturally occurring and/or accelerator-produced radioactive material (NARM) containing hazardous waste (see http://www.epa.gov/radiation/mixed-waste/mw_rule.htm). Specifically, LLMW is exempt from the regulatory definition of hazardous waste when persons notify the Director that the LLMW is generated and stored and/or treated in qualified (compliant) tanks or containers under a single Nuclear Regulatory Commission (NRC) or NRC Agreement State license. LLMW and eligible NARM are exempt from hazardous waste transportation and disposal requirements provided they meet land disposal restrictions **-- CONTINUED ON NEXT PAGE --**

Development	Description of Development
Storage, Treatment, Transportation, and Disposal of Mixed Waste (C**ONTINUED)**	(LDR) treatment standards, comply with NRC (or NRC Agreement State) manifest and transportation regulations, and are disposed of at licensed low-level radioactive waste disposal facilities using prescribed containers. DOE facilities generally are not eligible for the exemptions (i.e., they are not subject to NRC regulation); however, a DOE comment package addressing EPA's proposed rule and advocating the use of State-approved, site-specific, risk-based variances is available at http://tis.eh.doe.gov/oepa/comments/rcra/narmcomments.pdf. ***Further information: Contact Bill Fortune at 202-586-7302, William.Fortune@eh.doe.gov or 202-586-3915 (fax).***
Hazardous Waste Identification Rule (HWIR): Identification and Listing of Hazardous Wastes; Final Rule; Notice of Data Availability & Request for Comments; Ext. of the Public Comment Period; Proposed Rule (66 *FR* 27266; May 16, 2001, 65 FR 44491; July 18, 2000, 65 FR 20934; April 19, 2000, 64 FR 63382; November 19, 1999)	Under HWIR (at http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/index.htm), EPA proposed an *implementation framework* for exempting from hazardous waste regulations wastes that meet risk-based, chemical-specific exemption levels (referred to as "the HWIR exemption"), and raised the possibility of replacing technology-based LDR treatment standards with risk-based standards. Another element, ***finalized*** May 16, 2001 (66 *FR* 27266) and available at the above URL, retains the RCRA "mixture" and "derived-from" rules, which assert that mixtures of and residues derived from listed hazardous wastes remain listed wastes. A consolidated DOE response (dated October 16, 2000) addressing EPA's proposed framework and revisions to LDR standards is accessible at http://tis.eh.doe.gov/oepa/comments/rcra/hwirnprmcmt.pdf. DOE comments (dated February 17, 2000) on the mixture/derived-from rules are at http://tis.eh.doe.gov/oepa/comments/rcra/hwircomments.pdf. ***Further information: Contact Bill Fortune at 202-586-7302, William.Fortune@eh.doe.gov or 202-586-3915 (fax)***
Land Disposal Restrictions; Advance Notice of Proposed Rulemaking (65 FR 37932; June 19, 2000) ("LDR Reinvention")	As part of its LDR Program Reinvention (at http://www.epa.gov/OSWRCRA/hazwaste/ldr/reinvent.htm), EPA presents the nine key issues being considered to improve the LDR program. These include changes designed to: • Encourage ***source reduction and recycling*** of hazardous waste • Encourage the development and sustained use of ***innovative treatment technologies*** for hazardous waste • Improve long-term performance of ***immobilization technologies*** for metal-bearing wastes • Most appropriately characterize, treat, and manage ***F001 - F005 spent solvents*** • Ensure treatment standards for ***reactive wastes*** are protective • Integrate public involvement into EPA's ***Determination of Equivalent Treatment*** (***DET***) decisions • Ensure ***macroencapsulation*** and the use of high density polyethylene (HDPE) vaults for debris are effect • Effectively characterize, using a new hazardous waste code or multiple listings, hazardous ***incineration ash*** • Tailor analytical approaches and specified methods of treatment to accommodate ***mixed waste***. DOE's consolidated comment package regarding these issues can be viewed and downloaded at http://tis.eh.doe.gov/oepa/comments/rcra/ldranprmcmt.pdf. ***Further information: Contact Bill Fortune at 202-586-7302, William.Fortune@eh.doe.gov, or 202-586-3915 (fax).***
Land Disposal Restrictions: Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088) and Regulatory Classification of K088 Vitrification Units; Proposed Rule (65 FR 42937; July 12, 2000)	This proposed rulemaking outlines EPA-suggested regulatory revisions that have the potential to affect the regulation of all **vitrification** units treating hazardous wastes (including mixed wastes). Specifically, EPA proposes that (1) vitrification units, whether direct-fired or indirectly heated and, regardless of whether the waste is being treated or recycled, must be classified as Subpart X miscellaneous units; and (2) RCRA permit writers must use maximum achievable control technology (MACT) standards for *hazardous waste combustors* (40 CFR Part 63, Subpart EEE) when setting unit-specific air emission limits. An EH-413 memorandum advising DOE elements of the proposal, including a *Summary of Issues [& Questions for DOE Elements to Consider]*, is accessible at http://tis.eh.doe.gov/oepa/comments/rcra/vitnotif.pdf. ***Further information: Contact Bill Fortune at 202-586-7302, William.Fortune@eh.doe.gov, or 202-586-3915 (fax).***

Development	Description of Development
Deferral of Phase IV Standards for PCB's as a Constituent Subject to Treatment in Soil; Final Rule (65 FR 81373; December 26, 2000)	Under RCRA's LDR program, polychlorinated biphenyls (PCBs) in characteristic "contaminated soil" must be reduced, removed, or immobilized to concentrations of less than 10 parts per million (ppm) prior to disposal. This final rule temporarily defers this LDR requirement for PCB-containing soils that exhibit the toxicity characteristic for metals, removing a significant barrier to cost-effective management of contaminated soil. An EH-413 *Regulatory Bulletin* (August 2001) summarizing the final rule and discussing its potential effects on DOE environmental restoration activities can be accessed at http://tis-nt.eh.doe.gov/oepa/guidance/rcra/pcbdeferral.pdf. To view DOE's consolidated comment package advocating the need for this deferral go to http://tis.eh.doe.gov/oepa/comments/rcra/pcb-dfl.pdf. ***Further information: Contact Bill Fortune at 202-586-7302, William.Fortune@eh.doe.gov, or 202-586-3915 (fax).***
EH-413 Memorandum and Consolidated Comment Package dated October 25, 1999, titled *Potential Revisions to the Land Disposal Restrictions Mercury Treatment Standards; Advanced Notice of Proposed Rulemaking (ANPRM)*	This advanced notice *(64 FR 28949; May 28, 1999)* focuses on three key issues related to current LDR treatment standards for mercury-bearing hazardous waste, including mixed waste: (1) "RMERC" (Retorting or roasting in certain thermal processing units that are capable of recovering volatilized mercury) – Trends suggest that secondary mercury production may exceed demand; (2) ***Incineration*** – EPA has determined that mercury is not being recovered from incineration residues and air pollution control devices are not capturing mercury; and (3) ***Source Reduction Options*** – EPA views reducing or eliminating mercury from a waste stream as environmentally superior to end-of-pipe standards. Accordingly, EPA is considering the use of a two-part LDR standard that integrates an optional, alternative standard relying on reducing the volume of or mercury concentration in mercury-bearing waste. EPA is also considering whether to eliminate RMERC as the specified technology for high-mercury mixed wastes, and allow non-RMERC technologies (e.g., stabilization) to treat such wastes for direct disposal. An EH-413 memorandum notifying DOE Program Offices and Field Organizations of the ANPRM, and requesting DOE comments and data is at http://tis.eh.doe.gov/oepa/comments/rcra/ldranprm.pdf. ***Further information: Contact Bill Fortune at 202-586-7302, William.Fortune@eh.doe.gov, or 202-586-3915 (fax).***
Clarification from EPA on RCRA LDR Treatment Standards Applicable to Certain Radioactive Lead Acid Batteries	In response to a DOE request for clarification ("Interpretation of LDR Treatment Standard Applicable to Drained, Radioactively Contaminated Lead Acid Batteries"), EPA's Office of Solid Waste (OSW) sent a reply (dated August 9, 2001) confirming that macroencapsulation is the appropriate LDR treatment standard for such wastes. At issue was whether drained, radioactively contaminated batteries should be categorized as "radioactive lead solids" subject to *macroencapsulation* ("MACRO") or "lead acid batteries," which are required to undergo *thermal recovery* of lead ("RLEAD"). A PDF file containing the DOE/EH-41 request and the EPA response is accessible at http://www.eh.doe.gov/oepa/guidance/rcra/pbacidbatteries.pdf. ***Further information: Contact Bill Fortune at 202-586-7302, William.Fortune@eh.doe.gov, or 202-586-3915 (fax).***